

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Apr 20, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

OMAR LIZARRAGA-CEDANO,

Defendant.

No. 2:04-CR-00015-SAB

**ORDER DENYING  
DEFENDANT'S MOTION FOR  
COMPASSIONATE RELEASE;  
MOTION FOR  
RECONSIDERATION**

Before the Court are Defendant's Motion for Reconsideration and Resentencing Pursuant to 18 U.S.C. § 3582(c)(2) in Light of Holloway Doctrine (2014), ECF No. 285 and Defendant's Motion Under § 3582(c)(1)(A) in the Wake of the First Step Act Based on Extraordinary and Compelling Reasons, ECF No. 287. The motions were heard without oral argument. Defendant, a federal prisoner at FCI McDowell, is representing himself. The United States is represented by Assistant United States Attorney Stephanie Van Marter.

**1. Defendant's Motion for Reconsideration and Resentencing Pursuant to 18 U.S.C. § 3582(c)(2) in Light of Holloway Doctrine (2014)**

It appears Defendant is asking the Court to reconsider its re-sentencing decision that it issued on April 19, 2016, based on a district court opinion that was issued in the Eastern District of New York, *United States v. Holloway*, 68

**ORDER DENYING DEFENDANT'S MOTION FOR COMPASSIONATE  
RELEASE; MOTION FOR RECONSIDERTION ~ 1**

1 F.Supp.3d 310 (E.D. N.Y. 2014). It appears that Defendant believes the “Holloway  
2 Doctrine” permits the Court to ask or direct the prosecutor to exercise their  
3 discretion to agree to reduce or modify his sentence.

4 Not only is Defendant’s motion untimely, the Ninth Circuit has not  
5 recognized the “Holloway Doctrine” and this Court declines to do so. Moreover,  
6 courts that have considered the so-called “Holloway Doctrine” motion have  
7 uniformly declined to follow it. *See e.g. United States v. Nevers*, 2019 WL 7281929  
8 (E.D. La. Dec. 27, 2019); *United States v. Thomas*, 2019 WL 4257245 (E.D. La.  
9 Sept. 9, 2019); *United States v. Diaz*, 2018 WL 4119900 (D. Haw. June 7, 2018);  
10 *Whitt v. United States*, 2017 WL 5257709 (N.D. Ind. Nov. 13, 2017); *United States*  
11 *v. Gonzalez*, 2017 WL 4022797 (D. Conn. Sept. 13, 2017). As such, Defendant’s  
12 Motion for Reconsideration and Resentencing Pursuant to 18 U.S.C. § 3582(c)(2)  
13 in Light of Holloway Doctrine (2014) is denied.

14 **2. Defendant’s Motion Under § 3582(c)(1)(A) in the Wake of the First Step**  
15 **Act Based on Extraordinary and Compelling Reasons**

16 Defendant asks this Court to grant his release from custody pursuant to 18  
17 U.S.C. § 3582(c)(1)(A). He asserts the following extraordinary and compelling  
18 reasons exist that justify the granting of his motion: (1) the COVID-19 pandemic,  
19 and (2) Defendant’s post-sentencing rehabilitation.

20 Notably, Defendant indicates that he does not have any physical conditions  
21 that place him at an increased risk for serious complications from COVID-19  
22 infection. It appears that Defendant was infected with COVID-19 in November  
23 2020 and suffered no serious complications and did not require hospitalizations.  
24 On the contrary, it appears that Defendant’s infection was entirely asymptomatic.

25 Additionally, the United States indicates that while Defendant has  
26 participated in several educational programs during his time in BOP custody,  
27 including completing his GED, he also faced discipline several times, including for  
28 physical fights and weapons possession.

1 The Court finds that Defendant has not identified or proven extraordinary  
2 and compelling reasons warranting a sentence reduction or release.

3 Additionally, the 18 U.S.C. § 3553(a) factors counsel against release.  
4 Defendant was a leader of a drug trafficking organization operating out of the Tri-  
5 cities Washington area with distribution into Spokane, Northern Idaho, Montana  
6 and elsewhere that was responsible for pound-quantity trafficking of  
7 methamphetamine and cocaine. Defendant has been deported from the United  
8 States on four occasions prior to his arrest. The nature and circumstances of the  
9 underlying offense, as well as Defendant's history and characteristics do not  
10 support his position that he is a good candidate for release or sentence reduction.

11 Because Defendant has not shown that he meets the criteria for sentence  
12 reduction or release set forth in 18 U.S.C. § 3582(c)(1)(A), his motion is denied.

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**ORDER DENYING DEFENDANT'S MOTION FOR COMPASSIONATE  
RELEASE; MOTION FOR RECONSIDERTION ~3**

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendant's Motion for Reconsideration and Resentencing Pursuant  
3 to 18 U.S.C. § 3582(c)(2) in Light of Holloway Doctrine (2014), ECF No. 285, is  
4 **DENIED.**

5 2. Defendant's Motion Under § 3582(c)(1)(A) in the Wake of the First  
6 Step Act Based on Extraordinary and Compelling Reasons, ECF No. 287, is  
7 **DENIED.**

8 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order  
9 and forward copies to counsel.

10 **DATED** this 20th day of April 2021.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

16 Stanley A. Bastian  
17 Chief United States District Judge  
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